

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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: In the Matter of the Petition of :  
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WISCONSIN COUNCIL 40, AFSCME, AFL-CIO :  
: Case 22  
Involving Certain Employees of : No. 50052 ME-3365  
: Decision No. 28112  
CITY OF SEYMOUR :  
:  
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Appearances:

Godfrey & Kahn, S.C., Attorneys at Law, by Mr. Dennis W. Rader, P.O. Box 1300  
Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Wisconsin Council 40, American Federation of State, County and Municipal Employees, AFL-CIO having on November 9, 1993, filed a petition requesting that the Wisconsin Employment Relations Commission conduct an election to determine whether a majority of the employees in a bargaining unit consisting of "All clerical and paraprofessional employees of the City of Seymour working at City Hall, the Police Department and the Library, excluding elected officials, managerial, supervisory and confidential employees" desire to be represented by AFSCME for the purposes of bargaining over wages, hours and conditions of employment; and the petition having been held in abeyance pending efforts at a stipulation; and a hearing having been held on the petition on February 7, 1994 before Daniel Nielsen, an Examiner on the Commission's staff, at which time the parties were able to reach a stipulation on all questions with the exception of the confidential status of the Deputy City Clerk; and a transcript of the hearing, post-hearing briefs and reply briefs having been received by the Examiner by April 7, 1994; and the Commission having considered the evidence, the arguments of the parties, and the record as a whole, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. The City of Seymour, hereinafter referred to as either the Employer or the City, is a municipal employer providing general governmental services to the people of Seymour in Outagamie County. The City maintains its principal offices at City Hall, 328 North Main Street, Seymour, Wisconsin 54165.

2. Wisconsin Council 40, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as either AFSCME or the Union, is a labor organization maintaining its principal offices c/o James E. Miller, Staff Representative, 936 Pilgrim Way, No. 6, Green Bay, Wisconsin 54304.

3. The City employs a total of 24 full-time employees, including department heads. A separate Library Board oversees the operation of the public library. The parties have stipulated that the employees of the Library do not share a community of interest with the eight employees (Deputy City Clerk, police secretary, ambulance billing/police secretary, bookkeeper, DPW secretary, and three custodians) who are the subject of this petition.

4. The City operates a police department staffed by a chief, four full-time officers, four part-time officers, a full-time secretary/dispatcher and another secretary who is employed one day a week in the police department, and spends the remainder of her time in the ambulance billing department. The police officers are represented for the purposes of collective bargaining by AFSCME. The Police Department is located across a parking lot from the City Hall.

5. The City operates a department of public works. Ten to twelve employees of the DPW are represented for the purposes of collective bargaining by AFSCME. The DPW also employs a Director and a secretary.

6. The City Clerk/Treasurer is Susan Garsow. The Clerk takes minutes of Common Council and committee meetings, has principal administrative responsibilities for the City and is the lead person on labor relations matters for the City. She keeps the records of the City, including personnel records. The Clerk/Treasurer's office is staffed by Garsow, Deputy Clerk Brenda Springstroh and a bookkeeper, who is located in a different office in City Hall.

7. On November 9, 1993 the Union filed a petition with the Wisconsin Employment Relations Commission, seeking a representation election in a unit described as:

"All clerical and paraprofessional employees of the City of Seymour working at City Hall, the Police Department and the Library, excluding elected officials, managerial, supervisory and confidential employees."

In discussion prior to the hearing, the parties narrowed this unit to exclude employees of the Library, and stipulated that the full-time police secretary/dispatcher was a confidential employee. The positions covered by the petition include the Deputy City Clerk, ambulance billing/police secretary, bookkeeper, DPW secretary, and three custodians. The parties have stipulated to the appropriateness of the unit, but disagree over the confidential status of the Deputy City Clerk.

8. The Deputy City Clerk Springstroh is responsible for keeping the minutes of City Council meetings and committee meetings in the absence of the City Clerk. The City Council has five committees, each of which meets monthly. The Council itself meets twice a month. From 1989 through the date

of the hearing on this petition, Springstroh had taken minutes at four meetings of the Personnel Committee, and one meeting each of the Streets and Sanitation Committee, Courts and Public Safety Committee, and the Utility Board. All of these meetings were held in open session. She took minutes at two Common Council meetings, one of which was a closed session to discuss a land sale. Springstroh also prepares packets of information that council members receive prior to meetings. These packets include minutes of committee meetings.

9. Springstroh functions as the Clerk's secretary, answering the telephone and taking a message if the Clerk is not available. On one occasion in 1992, she took a message from the City's insurance agent:

Bill said the health insurance plan we have as we know it will not be available next year. At present time we have \$100/\$200 (family) deductible for major medical. It will go to \$100 deductible on everything with us paying 80/20 up to \$2,000. There is a maximum out of pocket expense of \$500. He said to call him Monday and he will review it with you.

10. Springstroh distributes the mail for all City departments except the Police Department by placing it in mail slots in the Clerk's office. Police Department mail is delivered directly to the department. She opens all of the City Clerk's mail unless it is marked "confidential", and date stamps the mail as it is received. She looks at the mail and may bring an item to the Clerk's attention if it appears to be urgent. Generally she just puts the mail in a pile on the Clerk's desk.

11. Springstroh does occasional correspondence for the Mayor. More frequently she does correspondence for the Clerk. In November of 1993, after Springstroh initiated the instant petition for representation, the Clerk directed her to type two letters to the City's outside labor counsel regarding the petition. In January of 1994, she was given four letters prepared by the City's outside labor counsel. All four responded to pending grievances in the DPW. She was told to retype them with no changes on City letterhead. Aside from the correspondence in November and January, Springstroh has never prepared letters related to labor relations.

12. Springstroh and the bookkeeper have access to the Clerk's inner office, where personnel files are kept. In 1994, Springstroh was directed to compile information from these files in connection with a pending unemployment compensation case. She had never previously performed such work.

13. The police secretary/dispatcher is located in the Police Department across the parking lot from the City Hall. She functions as the secretary for the Police Chief, preparing correspondence and answering his telephone calls. She also dispatches police, fire and rescue units. She has not performed any work for other City departments. The Police Department also has a part-time secretary who works an average of one day per week.

14. The secretary in the Department of Public Works has, prior to the filing of the instant petition, performed correspondence work relating to confidential labor relations matters.

15. The Deputy City Clerk has insufficient access to or involvement in

confidential labor relations matters to be a confidential employee.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

#### CONCLUSIONS OF LAW

1. A unit comprised of "All regular full-time and regular part-time clerical and para-professional employees of the City of Seymour working at City Hall and the Police Department, excluding elected officials, managerial, supervisory and confidential employees" is an appropriate unit for the purposes of collective bargaining within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. Deputy City Clerk Brenda Springstroh is not presently a confidential employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is included in the bargaining unit set forth in Conclusion of Law 1.

3. A question concerning representation exists as to the municipal employees in the collective bargaining unit set forth in Conclusion of Law 1.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

#### DIRECTION OF ELECTION

An election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time clerical and para-professional employees of the City of Seymour working at City Hall and the Police Department, excluding elected officials, managerial, supervisory and confidential employees who were employed by the City of Seymour on July 19, 1994, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees, who vote in the election desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO, for the purposes of collective bargaining with the City of Seymour concerning wages, hours and conditions of employment or desire not to be represented.

Given under our hands and seal at the City of  
Madison, Wisconsin this 19th day of July, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner

City of Seymour

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

Arguments of the Parties

The Position of the City:

The City takes the position that the Deputy Clerk must be excluded from the bargaining unit as confidential. She is the principal assistant and secretary to the City Clerk, who is the City's resource person for collective bargaining negotiations. As such, the Deputy Clerk is necessarily exposed to the correspondence, faxes and telephone messages going to the City Clerk on confidential matters. She has taken messages concerning insurance coverage and has typed correspondence regarding grievances and labor relations matters.

With the extension of bargaining rights to City Hall employees and the addition of another bargaining unit, this involvement will inevitably expand.

The City notes that clerical employees elsewhere, such as the DPW, will become represented and can no longer handle confidential matters. Thus the confidential clerical duties must be centralized and the City Clerk's office is the logical repository of those functions.

The City also points to the Deputy Clerk's role as minute-taker for the City Council and its committees when the City Clerk is absent. The various committees deal with labor relations matters for the departments they have jurisdiction over (Streets and Sanitation Committee and the Utility Board address issues concerning the DPW bargaining unit; the Courts and Public Safety Committee handles issues concerning the police bargaining unit; the Finance Committee has jurisdiction over all of the wage and benefits issues in the City; and the Personnel Committee has City-wide jurisdiction). Moreover, the Deputy Clerk prepares packets for Council members, which include all of the committee minutes, so she has access to potentially confidential information whether she takes the minutes of the meetings or not.

The City asserts that the confidential secretary in the police department cannot be required to assume all of the confidential duties for the City. The City Clerk should not be required to rely upon a clerical who works for a different department, located in a different building, to open her correspondence, type her confidential correspondence, take her telephone messages, compile committee packets and back her up as minute-taker for the Common Council. It is simply impractical and disruptive to the City's operations to divide the operations of the City Clerk's office in this manner and to burden the police secretary with additional duties.

### The Position of the Union:

The Union argues that the Deputy Clerk's job has never been a confidential position, and that the only confidential duties ever performed in the job were assigned after this petition was filed. Taking minutes at open public meetings is hardly confidential labor relations work. Having access to personnel files that are open to the employees themselves does not involve the Deputy Clerk in anything of a sensitive nature. Opening mail and putting it in a pile for the City Clerk's review does nothing to compromise the City's negotiating position. The record shows exactly one telephone message 18 months ago regarding insurance that could be termed "confidential" information and this de minimis exposure cannot justify stripping this employee of her right to be represented. As for the confidential correspondence typed by the Deputy Clerk, the Union notes that this typing work, consisting of six letters, was first performed shortly after this petition was filed, and that four of these letters were grievance responses which were simply retyped word for word from letters prepared by the City's outside labor counsel.

The Union notes that the parties have stipulated to a confidential employee in this bargaining unit, and argues that one position out of eight should be sufficient for the City's purposes. The City's entire case on the Deputy Clerk is premised on potential changes in her duties, and the City can just as easily assign these duties to the police secretary. The addition of seven represented employees to the City work force should have no appreciable effect on the amount of confidential work in the City. The evidence does not establish any confidential involvement of the Deputy Clerk prior to this petition and there is absolutely no basis for the City's belief that her access to or involvement in labor relations matters will increase in the future. The minor exposure that the Deputy Clerk could potentially have to confidential matters can easily be redirected to the police secretary without any disruption of City operations.

### Discussion

In order for an employee to be held confidential, that employee must have access to, knowledge of, or participation in confidential matters relating to labor relations. Confidential information is that which is not available to the bargaining representative or its agents, and which deals with the employer's strategy or position in collective bargaining, contract administration, litigation or similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer. 1/

In reviewing an allegation of confidential status, the Commission is mindful of the need to balance the statutory right of employees to engage in concerted activity with the right of employers to conduct labor relations through employees whose interests are aligned with management.

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1/ Dane County, Dec. No. 22976-C (WERC, 9/88); Village of Saukville, Dec. No. 26170 (WERC, 9/89) at p. 6.

In this case, the existing confidential duties of the Deputy Clerk are minimal. The taking of minutes at open meetings involves nothing of a confidential nature, and the Deputy Clerk has performed this function only seven times out of over 300 meetings between 1989 and the present. Access to personnel files may, in some cases, translate into access to confidential labor relations information but the files are kept in the Clerk's private office, and the Deputy's access to those files is within the Clerk's control. Moreover, employees have access to their personnel files and as with minutes of meetings, the information is thus not confidential in a labor relations context.

As for her confidential duties as the clerical assigned to the City Clerk, the City has two bargaining units already, and the City Clerk is the lead person in preparing bargaining information for those units. Yet the City has identified only one telephone message in five years that arguably dealt with confidential information, and only six letters regarding labor relations, all of which were assigned to the Deputy Clerk after this petition was filed.  
2/

However, the amount of confidential work in the City will in all likelihood increase with the possible addition of a third bargaining unit and the attendant negotiations over an initial contract. The subsequent administration of that contract may also add to the amount of confidential work. Further, to the extent that the Director of Public Works now performs contract administration duties with the assistance of his secretary, the inclusion of that secretary in the new bargaining unit will necessitate a shifting of those confidential duties to another employee. There is no question that the City is entitled to have a confidential clerical employee to perform these duties. Absent the stipulation that the Police secretary/dispatcher is a confidential employee, the Deputy City Clerk would be the logical choice. However, in light of the existing stipulation, the question is whether the amount of confidential work and the organizational structure of the City justify excluding both the Deputy City Clerk and the Police secretary from the potential bargaining unit.

From the evidence of the amount of confidential work generated by the two existing units, we conclude that the potential additional unit will not generate enough confidential work to justify two confidential employees. In light of the existing stipulation, the Deputy Clerk remains eligible to be included in the unit. We acknowledge the organizational difficulty of routing all confidential correspondence, research and telephone calls related to the DPW and the potential City Hall unit through the Police secretary rather than the City Clerk's office. However, we do not find such a consolidation to be unduly

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2/ The City Clerk also testified that Springstroh served as a confidant for her, and that they discussed negotiating sessions on the morning after such sessions. Springstroh denied that any such conversations took place, and even assuming that they did, this is a social interaction rather than a job duty. The City Clerk has the option of chatting about confidential matters with someone else if she wishes.

disruptive of the City's organizational structure. To the extent the City feels otherwise, it can elect to consolidate all confidential work with the Deputy City Clerk in which case the Police secretary would cease to be confidential and would be included in the unit.

Dated at Madison, Wisconsin this 19th day of July, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner